

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
RICHARD DALY,

Plaintiff,

- against -

METRO-NORTH COMMUTER RAILROAD,

Defendant.  
-----X

**ANSWER**

08 CV 00234 (GEL)

Defendant METRO-NORTH COMMUTER RAILROAD ("Defendant"), by its attorneys,  
Landman Corsi Ballaine & Ford P.C., hereby answers the Complaint herein as follows:

1: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FIRST" of the Complaint and refers all matters of law to the Court.

2: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "SECOND" of the Complaint, except admits that Defendant is a public benefit corporation organized and existing under the laws of the State of New York.

3: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "THIRD" of the Complaint and refers all matters of law to the Court.

4: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FOURTH" of the Complaint and refers all matters of law to the Court.

5: Defendant denies the truth of each and every allegation contained in paragraph "FIFTH" of the Complaint and refers all matters of law to the Court.

6: Defendant denies the truth of each and every allegation contained in paragraph "SIXTH" of the Complaint and refers all matters of law to the Court.

7: Defendant denies the truth of each and every allegation contained in paragraph "SEVENTH" of the Complaint and refers all matters of law to the Court.

**FIRST AFFIRMATIVE DEFENSE**

8: Any injuries suffered by plaintiff were caused solely by his own negligence and not by any negligence of the defendant.

**SECOND AFFIRMATIVE DEFENSE**

9: Any injuries suffered by plaintiff were caused, in part, by his own negligence, and any recovery by plaintiff must be diminished in proportion to that part of his injuries attributable to his own negligence.

**THIRD AFFIRMATIVE DEFENSE**

10: Any injuries suffered by plaintiff were not caused by a negligent act or omission of defendant or any individual acting under their direction or control.

**FOURTH AFFIRMATIVE DEFENSE**

11: Plaintiff failed to mitigate or otherwise act to lessen or reduce the damages alleged in the Complaint.

**FIFTH AFFIRMATIVE DEFENSE**

12: Plaintiff's claims are pre-empted by the Boiler Inspection Act and/or other federal statutes.

**SIXTH AFFIRMATIVE DEFENSE**

13: Plaintiff's claims are pre-empted by the Safety Appliances Act and/or other federal statutes.

**WHEREFORE**, defendant demands judgment dismissing the Complaint herein, together with its costs and disbursements, and such other and further relief as this Court deems appropriate.

Dated: New York, New York  
February 29, 2008

Respectfully submitted,

LANDMAN CORSI BALLAINE & FORD P.C.

By: Philip DiBerardino  
Philip DiBerardino (PD-9274)  
Attorneys for Defendant  
Metro-North Commuter Railroad  
120 Broadway, 27th Floor  
New York, New York 10271-0079  
(212) 238-4800

TO: LAW OFFICES OF MICHAEL FLYNN PC  
Attorneys for Plaintiff  
1205 Franklin Avenue  
Garden City, New York 11530  
(516) 877-1234

AFFIDAVIT OF SERVICE BY MAIL


STATE OF NEW YORK     }  
COUNTY OF NEW YORK   } ss.:

**Jelena Brigida**, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at BROOKLYN, NEW YORK.

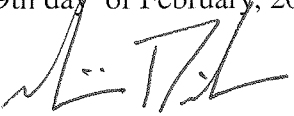
That on the 29th day of February, 2008, deponent served the within **ANSWER** upon

LAW OFFICES OF MICHAEL FLYNN PC  
Attorneys for Plaintiff  
1205 Franklin Avenue  
Garden City, New York 11530  
(516) 877-1234

attorneys in this s action, at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
\_\_\_\_\_  
Jelena Brigida

Sworn to before me this  
29th day of February, 2008



\_\_\_\_\_  
Notary

MIRIAM DEIKUN  
Notary Public, State of New York  
No. 01DE6141377  
Qualified in Queens County  
Commission Expires February 21, 2010